

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 96-53

In the Matter of

Amendment of Section 73.606(b). RM-8767
Table of Allotments,
TV Broadcast Stations.
(Marinette, Wisconsin)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 6, 1996; Released: March 21, 1996

Comment Date: May 13, 1996

Reply Comment Date: May 28, 1996

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Douglas A. Maszka d/b/a Tri-City Television Company ("petitioner"), requesting the allotment of UHF Television Channel 25 to Marinette, Wisconsin, as that community's first local television service.¹ Petitioner provides information in support of the proposal and states its intention to apply for the channel at Marinette, if allotted.

2. Marinette (population 11,843)² in Marinette County (population 40,548) is located in northeastern Wisconsin approximately 230 kilometers (143 miles) north of Milwaukee.

3. A staff engineering analysis of the proposal indicates that UHF Television Channel 25 can be allotted to Marinette, Wisconsin, consistent with the minimum distance separation requirements of Section 73.610 of the Commission's Rules without a site restriction. However, the Commission has imposed a temporary freeze on new television allotments in certain metropolitan areas. See *Notice of Inquiry*, 2 FCC Rcd 2125 (1987) and *Order* 52 FR 28346, July 29, 1987. Marinette is one of the communities affected by the freeze Order with regard to Milwaukee.

¹ We note that Douglas A. Maszka d/b/a Tri-Cities Television Company filed a petition to allot Channel 25 to Menominee, Michigan, or allotment of Channel 46 at Wittenberg, Wisconsin, or substitution of Channel *25 for Channel *17 at Iron Mountain, Michigan, allotment of Channel 17 at Wittenberg, Wisconsin, and change of the offset for Channel 17, Ely, Minnesota, from a minus to a plus. A *Notice of Proposed Rule Making* was issued in response to the petition in MM Docket 94-80. See 9 FCC Rcd 3314 (1994). The *Report and Order* in Docket 94-80 dismissed the proceeding for lack of interest on behalf of the petitioner or any other party (9 FCC Rcd 6086 (1994)). As a precautionary matter, in *Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3914 (1990), *recon. denied*, 6 FCC Rcd 3380 (1991), the Commission held: A statement of interest in operating a station made by a party who, in fact, lacks the requisite

Wisconsin. On further analysis, we find that Channel 25 can be proposed for allotment to Marinette in compliance with the terms of the freeze Order with a site restriction 18.6 kilometers (11.6 miles) north of the community.³ Therefore, we request that petitioner states its willingness to specify a site which would not conflict with the freeze on new allotments within the proscribed area surrounding Milwaukee. The proposed allotment of Channel 25+ will require a plus offset.⁴ Since Marinette is located within 400 kilometers (250 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be obtained for this proposal.

4. We believe the public interest would be served by proposing the allotment of Channel 25+ to Marinette, Wisconsin. Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Present	Channel No.	Proposed
Marinette, Wisconsin	---		25+

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **May 13, 1996**, and reply comments on or before **May 28, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Douglas A. Maszka
Tri-City Television Company
600 Vroman Street
Green Bay, Wisconsin 54303

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the*

intent to construct and operate the proposed facility will hence forth be considered a material misrepresentation within the meaning of Section 3.1105 of the Rules and would be subject to prosecution pursuant to Section 502 of the [Communications] Act [of 1934, as amended], forfeiture pursuant to Section 503 of the Act or other appropriate administrative sanctions.

² Population figures are from the 1990 U.S. census.

³ The coordinates for Channel 25+ at Marinette are 45-15-54 and 87-36-51.

⁴ "A station with a plus or minus offset is required to operate with its carrier frequency 10 kHz above or below the normal carrier frequency. A different offset between two television stations reduces interference and makes possible the separation criteria set forth in our Rules." *Crandon, Wisconsin*, 3 FCC Rcd 6765 n.1 (1988).

Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allotments Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the Television Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.